



# RAVALLI COUNTY ATTORNEY

*George H. Corn, County Attorney*  
*T. Geoffrey Mahar, Chief Deputy*  
*John Bell, Deputy*  
*Karen Mahar, Deputy*  
*William E. Fulbright, Deputy*  
*Alex Beal, Deputy*

Ravalli County Courthouse  
205 Bedford, Suite C  
HAMILTON, MT 59840-2853  
Phone (406) 375-6750  
Fax (406) 375-6731

RECEIVED

JUN 18 2007

Ravalli County Commissioners

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June 18, 2007

Keith Stapley  
MACO  
2715 Skyway Drive  
Helena, MT 59602-1213

Re: Ravalli County v. Floyd and Renascent, Inc.

Dear Keith:

Please find enclosed a complaint and an Acknowledgement of Service in the above entitled case. They were received by my office on Friday, June 15<sup>th</sup>, 2007. I have not signed the Acknowledgment of Service. I am sending this to you for defense and a request for coverage.

Thank you for your attention to this matter.

Sincerely,

  
George H. Corn  
Ravalli County Attorney

Cc: Ravalli County Commissioners, Alex Beal

# Markette Law Office

601 SOUTH FIRST STREET • P.O. BOX 515 • HAMILTON, MONTANA 59840

DAVID T. MARKETTE

TELEPHONE: (406) 363-1110  
FAX: (406) 363-7418

DUSTIN M. CHOUINARD

June 14<sup>th</sup>, 2007

RECEIVED

JUN 15 2007

Ravalli County Attorney's Office

George Corn, County Attorney  
Ravalli County Attorney's Office  
205 Bedford, Suite C  
Hamilton, MT 59840

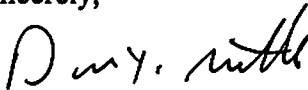
RE: Ravalli County v. Floyd and Renascent, Inc.  
Ravalli County District Court Cause No. DV 06-234

Dear George:

Enclosed herewith, you will find a Complaint filed on behalf of Dan Floyd and Renascent, Inc. As you know, in light of the Floodplain Administrator's refusal to follow applicable law and the Court's previous Order, my clients had no other alternative but to seek a solution through litigation.

I have enclosed a Notice and Acknowledgment of Service. Please let me know if you are in a position to acknowledge service.

Sincerely,



David T. Markette  
Attorney at Law

DTM/ho

cc: client

enc. (as stated)

David T. Markette  
Dustin M. Chouinard  
**MARKETTE LAW OFFICE**  
601 South First Street  
P.O. Box 515  
Hamilton, Montana 59840  
(406) 363-1110

*Attorneys for Plaintiffs*

**MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY**

DANIEL W. FLOYD and	)	Cause No. DV 07-280
RENASCENT, INC.,	)	
	)	Dept No. 2
Plaintiff,	)	
	)	<b>NOTICE AND ACKNOWLEDGMENT</b>
v.	)	<b>OF RECEIPT OF SUMMONS AND</b>
	)	<b>COMPLAINT AND REQUEST FOR</b>
RAVALLI COUNTY and	)	<b>DECLARATORY JUDGMENT</b>
JOHN DOES ONE THROUGH TEN,	)	
	)	
Defendants.	)	

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**NOTICE**

To: GEORGE CORN, COUNTY ATTORNEY  
RAVALLI COUNTY ATTORNEY'S OFFICE  
205 BEDFORD, SUITE C  
HAMILTON, MT 59840

Who is the Defendant's Attorney of Record herein:

The following documents are served pursuant to Rule 4(d)(1)(b) of the Montana Rules of

Civil Procedure:

[X] Complaint and Request for Declaratory Judgment  
[X] Summons

**NOTICE AND ACKNOWLEDGMENT OF  
RECEIPT OF SUMMONS AND COMPLAINT  
AND REQUEST FOR DECLARATORY JUDGMENT**

If you want to avoid having the Sheriff serve you with the documents enclosed, you may complete the acknowledgment part of this form and return the completed form to the sender within twenty (20) days after the date it was mailed to you, as shown below. You may retain the other enclosed copy of this form for your records.

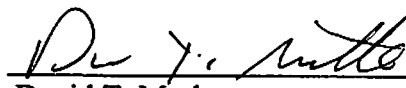
By signing the Acknowledgment, you are agreeing to be served by mail instead of by the Sheriff. It does not mean that you agree to the contents of the Complaint and Request for Declaratory Judgment and it does not take away any of your rights to contest the Complaint and Request for Declaratory Judgment.

If you decide to complete and return this form, you must sign and date the Acknowledgment below, and return it in the enclosed stamped return envelope.

If you do not complete and return this form to the sender within twenty (20) days after the date it was mailed to you, as shown below, you may be required to pay any expenses incurred in serving the enclosed documents in any other manner permitted by law.

If you do complete and return this form, you must answer the Complaint and Request for Declaratory Judgment within twenty (20) days after the date of signature which you place on the Acknowledgment below. If you fail to answer the complaint within the foregoing twenty (20) day period, judgment by default will be taken against you for the relief demanded in the Complaint and Request for Declaratory Judgment.

DATED this \_\_\_\_ day of June, 2007.

  
\_\_\_\_\_  
David T. Markette,  
Attorney for Plaintiff

**CERTIFICATE OF MAILING**

I declare under penalty of perjury that two copies of this Notice and Acknowledgment of Receipt of Summons and Complaint and Request for Declaratory Judgment, a stamped return envelope, and the following documents:

[X] Complaint and Request for Declaratory Judgment  
[X] Summons

were sent to the Defendant's Attorney of Record by first class mail, postage prepaid on the \_\_\_\_\_ day of June, 2007.

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
Heather Oster  
Legal Assistant to David T. Markette

**ACKNOWLEDGMENT OF RECEIPT**

I declare, under penalty of perjury, that I am the Defendant's Attorney of Record and that I accept service in this action of the following:

[X] Complaint and Request for Declaratory Judgment  
[X] Summons

and that I received a copy of these documents in the above captioned matter at 205 Bedford, Suite C, Hamilton, Montana, on the \_\_\_\_\_ day of June, 2007.

\_\_\_\_\_  
Date of Signature

\_\_\_\_\_  
George Corn,  
Attorney for Defendants

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of June, 2007.

(Notary Seal)

\_\_\_\_\_  
Notary Public for the State of Montana.  
Residing at \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

NOTICE AND ACKNOWLEDGMENT OF  
RECEIPT OF SUMMONS AND COMPLAINT  
AND REQUEST FOR DECLARATORY JUDGMENT

David T. Markette  
Dustin M. Chouinard  
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601 South First Street  
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Attorneys for Defendant

FILED  
DEBBIE HARMON, CLERK  
JUN 11 2007

DEPUTY

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT, RAVALLI COUNTY

DANIEL W. FLOYD and  
RENASCENT, INC.,

Plaintiff,

v.

RAVALLI COUNTY and  
JOHN DOES ONE THROUGH TEN,

Defendants.

Cause No. DV 07-280

Dept. 2

COMPLAINT AND REQUEST FOR  
DECLARATORY JUDGMENT

COMES NOW, the above-named Plaintiffs, DANIEL W. FLOYD ("Floyd") and RENASCENT, INC. ("Renascent"), by and through their counsel of record, and for their Complaint against Defendant Ravalli County ("County"), complains and alleges as follows:

1. Plaintiff Floyd is, and at all times material hereto was, a resident of Ravalli County, Montana.

2. Plaintiff Renascent is a Nevada corporation registered as a foreign corporation with the Montana Secretary of State. It is the owner of record of two parcels of property located in Section 20, Township 8 North, Range 20 West, Ravalli County, Montana, and more particularly described as follows: Parcel B, Certificate of Survey No. 20 and Parcel 1, Certificate of Survey No. 485638-C.

1           3. Defendant County is a duly constituted political subdivision of the state  
2 of Montana. With respect to each of the allegations contained herein, actions attributed to the  
3 county are actions taken under authority of law by employees, agent and representatives of  
4 Ravalli County.

5           4. Renascent purchased the property at issue in or around September, 2002, and  
6 hired Professional Consultants, Inc. of Missoula, Montana ("PCI"), to obtain a survey of the  
7 property and to provide other design and engineering-related services.

8           5. In December 2002, PCI completed its survey and mapping of the property,  
9 including preparation of a map based on its survey and overlaid with the data contained in the  
10 "Flood Plain Management Study of the Bitterroot River" dated 1995 and revised April 1996.  
11 PCI sent copies of that map to Todd Klietz, the Ravalli County Floodplain Administrator.

12           6. In January 2003, Floyd met with Mr. Klietz. and the Ravalli County Sanitarian,  
13 Dan Hooten, to discuss the County's requirements with respect to construction of a new septic  
14 system and other improvements planned for the property. At that meeting, Klietz verbally  
15 approved Renascent's planned improvements with the proviso that house and garage not  
16 encroach into the floodplain. Floyd repeatedly asked Klietz, as the county floodplain  
17 administrator, if he had any other requirements or constraints, and Klietz said no.

18           7. The County issued a permit for construction of a engineered septic system  
19 suitable for a 9-bedroom house for the property at issue in February 2003. The system was  
20 inspected and approved in July 2003.

21           8. Renascent began construction of its planned improvements on or around March,  
22 2003. Most work performed was completed as of November, 2004..

23           9. In June, 2004, Larry Schock, an engineer with the Montana Department of  
24 Natural Resources and Conservation, sent a e-mail to Patricia Hill, Ravalli County Planning  
25 Department, and Patrick O'Herren, Ravalli County Planning Director, inquiring about some new  
26 improvements that he had noticed on property along the river, south of Bell Crossing.



1           10. At the time, the County had contracted with Landworks Consulting and Design,  
2 Inc. ("Landworks") to assist with floodplain administration matters. On July 27, 2004, Nathan  
3 Lucke of Landworks sent an e-mail to Patricia Hill in response to questions she had raised  
4 concerning the improvements to Renascent's property. Among other things, Lucke reported:

- 5           a. That the "islands" of land within floodplain were created by petition of  
6 the previous owner in 1994, based on survey data showing that those  
7 particular portions of the property were above the level of floodplain.  
8           b. That Todd Kliezt, while acting as County Floodplain Administrator,  
9 routinely did not require floodplain permit applications, even when some  
10 or all of the property at issue was located within the floodplain, and that  
11 James McCubbin [former deputy county attorney] supported Kliezt's  
12 position on the issue.

13           11. Also in July, 2004, Floyd received a visit from Hill informing him that he was  
14 in violation of county floodplain regulations. Floyd met with Hill and O'Herren the following  
15 day. They reviewed the plans then on file with the county. Floyd explained that each of the  
16 improvements shown in photos obtained by the county were outside of the floodplain boundaries.  
17 O'Herran told Floyd to hold off on filing any additional documents until the county had time to  
18 complete its investigation.

19           12. On or about August 17, 2004, Renascent received a letter from Landworks,  
20 listing at least ten alleged violations of county floodplain regulations. The letter also stated,  
21 however, that the County "will not consider any items within the 'island' to require a floodplain  
22 permit."

23           13. Between August 2004 and May 2005, the parties exchanged letters. Additional  
24 documentation was obtained and submitted. Finally, on April 27, 2005, Landworks informed  
25 Renascent that "we have received to our satisfaction the remaining deficient items" and that  
26 Ravalli County would require a floodplain permit application for a list of four remaining,  
27  
28

1 relatively minor, items.

2 14. During June, 2005, Renascent received a letter from the County Floodplain  
3 Administrator, stating that it must file an "after-the fact" permit application, along with various  
4 other letters from the county attorney's office and county commissioners, threatening litigation in  
5 the event that Renascent failed to comply.

6 15. On September 27, 2005, Renascent filed a completed preliminary floodplain  
7 permit application in order to avoid litigation threatened by the county attorney in a letter dated  
8 September 19, 2005.

9 16. By letter dated September 29, 2005, Laura Hendrix, County Floodplain  
10 Administrator, summarily rejected the application without any explanation as to its alleged lack  
11 of information or deficiencies. In so doing, the county violated its own regulations.

12 17. Renascent retained counsel to represent it in connection with any further  
13 proceedings. Following a meeting with the county attorney and floodplain administrator,  
14 Renascent agreed to have PCI prepare a new floodplain permit application.

15 18. On January 28, 2006, PCI submitted a final floodplain application on behalf of  
16 Renascent. In accordance with county floodplain regulation 3-7, the county had ten days from  
17 that date within which to review and notify applicant of any deficiencies. The County failed to  
18 do so.

19 19. On February 23, 2006, Laura Hendrix, County Floodplain Administrator,  
20 notified Renascent that its application had been reviewed and had "been determined deficient."  
21 Ms. Hendrix's untimely notification requested various information.

22 20. Even though the request for information was not timely, PCI, on behalf of  
23 Renascent, prepared a package containing all of the requested information. The package was  
24 received by the County Floodplain Administrator on March 21, 2006.

25 21. The County Floodplain Administrator did not respond to the material provided  
26 by PCI within the ten days required, or at any time.

22. By operation of the provisions of Section 76-5-405(2), M.C.A., Renascent's floodplain permit application was deemed granted and approved arguably, due to the County's failure to follow its own regulation, as early as October 9, 2005 and under any scenario, as of May 19, 2006.

23. Despite the fact that all violations alleged by the county since 2004 had been either resolved or were included within the permit approved effective no later than May 19, 2006, the County filed suit against Renascent and Floyd, personally, on May 22, 2006. The County sought a permanent injunction and other relief (*Cause No. DV-06-234, Ravalli County vs. Daniel W. Floyed and Renascent Inc.*).

24. Pursuant to a motion filed by Defendants in Cause No. DV 06-234, on October 20, 2006, the Court dismissed the County's claims, with prejudice. Although it initially appeared the County would come into compliance with the law and the Court's order of dismissal, in its actions, the County has continued its illegal conduct, negatively impacting Plaintiffs, in spite of Plaintiffs' efforts to fully and finally resolve all outstanding issues.

25. In spite of the dismissal of its claims, the County caused title to the referenced property to be clouded by filing a purported release of lis pendens, which included a letter authored by then deputy county attorney James D. McCubbins, essentially circumventing the Court's order of dismissal in DV 06-234. The release and correspondence have since been expunged by Court order.

26. Further, and also in spite of the Court's order granting Plaintiffs' motion to dismiss and express statutory and regulatory law, the Ravalli County Floodplain Administrator has failed, and now apparently refuses to issue a floodplain permit pursuant to Renascent's application.

1 **FIRST CAUSE OF ACTION**

2 (Violation of Civil Rights under Section 42 U.S.C.A. 1983)

3 27. Plaintiffs re-allege and incorporate herein by reference each and every  
4 allegation contained in paragraphs 1-26 above.

5 28. Defendant Ravalli County waived all right to require an "after-the-fact"  
6 floodplain permit application when, in 2003, its own appointed County Floodplain Administrator  
7 expressly declined to require any such application.

8 29. Ravalli County was aware of such waiver at the time it first made demands  
9 upon, and alleged violations against Renascent. Ravalli County deliberately ignored these facts  
10 and continued to persist in making unreasonable and unlawful demands upon Renascent.

11 30. The County used threats, including the threat of civil and criminal action, to  
12 coerce Renascent to comply with its unreasonable and unlawful demands.

13 31. Ravalli County, arbitrarily, capriciously, and in violation of its own regulations,  
14 rejected, without explanation, the floodplain permit application filed by Renascent, under protest,  
15 on September 27, 2005.

16 32. Ravalli County acted arbitrarily and capriciously in requiring that Renascent  
17 hire professional engineers to prepare a more detailed application, which application was  
18 submitted on January 28, 2006.

19 33. Ravalli County failed to notify Renascent of its review of that application  
20 within the time allotted under its own regulations.

21 34. Ravalli County was aware that, by operation of section 76-5-405(2), M.C.A.,  
22 (36.15.216 (3) ) A.R.M., Renascent's floodplain permit application was deemed granted as of  
23 May 19, 2006. Nevertheless, the County improperly filed suit on May 22, 2006, seeking an order  
24 requiring Renascent to obtain permits already obtained and threatening the destruction of all  
25 improvements on the property that the County deemed to be nuisances. Moreover, with  
26 knowledge that Floyd was not an owner of the subject property, Floyd was named as a defendant  
27  
28

1 in the County's suit, even though the County knew no legitimate factual or legal basis existed to  
2 bring a cause of action against Floyd.

3 35. In doing each of these things, Ravalli County has sought prosecution without  
4 any legitimate basis and has acted to deprive Renascent and Floyd of the rights secured to them  
5 under the United States Constitution and federal law.

6 36. Under section 42 U.S.C. §1983, Renascent, Inc. and Floyd are entitled to  
7 damages for the injuries cause by such violations of their civil rights.  
8

## 9 SECOND CAUSE OF ACTION

10 (Inverse Condemnation and Unlawful Taking)

11 37. Plaintiffs re-allege and incorporate herein by reference each and every  
12 allegation contained in paragraphs 1-36 above.

13 38. By its actions, and the continuation of its actions, even after dismissal of the  
14 County's claims, Ravalli County has sought to deprive Renascent of its property without just  
15 compensation in violation of Article II, section 29, Montana Constitution, and Plaintiff  
16 Renascent is entitled to compensation and damages.

## 17 THIRD CAUSE OF ACTION

18 (Intentional Interference with Property Rights)

19 39. Plaintiffs re-allege and incorporate herein by reference each and every  
20 allegation contained in paragraphs 1-38 above.

21 40. In doing each of the things alleged above, Ravalli County, by and through its  
22 employees, agents and representatives, has interfered with Plaintiffs' right to peaceful and quiet  
23 enjoyment of their property rights, and such interference has been done willfully, maliciously and  
24 with a reckless and spiteful disregard for Plaintiffs' rights..

25 41. These intentional acts have resulted in injury and damage to Plaintiffs, for  
26 which they are entitled to compensation.  
27

1           42. In addition, for such willful, malicious and repeated acts, Plaintiffs are also  
2 entitled to punitive damages in the amount of \$250,000.00.

3                           **FOURTH CAUSE OF ACTION**

4                           (Negligent Interference with Property Rights)

5           43. Plaintiffs re-allege and incorporate herein by reference each and every  
6 allegation contained in paragraphs 1-42 above.

7           44. In doing each of the things alleged above, Ravalli County, by and through its  
8 employees, agents and representatives, has been negligent and has interfered with Plaintiffs'  
9 right to peaceful and quiet enjoyment of their property.

10          45. Such negligence and negligent interference has resulted in injury and damage  
11 to Plaintiffs, for which they are entitled to compensation.

12                           **FIFTH CAUSE OF ACTION**

13                           (Negligence)

14          46. Plaintiffs re-allege and incorporate herein by reference each and every  
15 allegation contained in paragraphs 1-45 above.

16          47. In doing each of the things alleged above, Ravalli County, by and through its  
17 employees, agents and representatives, has administered state and local laws and regulation in a  
18 negligent fashion and with disregard for the injury to its citizens.

19          48. Such negligence has resulted in injury and damage to Plaintiffs, for which they  
20 are entitled to compensation.

21  
22                           **SIXTH CAUSE OF ACTION**

23                           (Defamation/Slander of Title)

24          49. Plaintiffs re-allege and incorporate herein by reference each and every  
25 allegation contained in paragraphs 1-48 above.

26          50. In doing each of the things alleged above, which include the malicious uttering,  
27  
28

1 publication, and dissemination of slanderous and false allegations by the County, the County  
2 slandered and defamed Floyd. Moreover, in addition, in so doing, the County slandered title to  
3 Renascent's real property.

4 51. Such defamation and slander has resulted in injury and damage to Plaintiffs, for  
5 which they are entitled to compensation.

#### 6 SEVENTH CAUSE OF ACTION

##### 7 (Malicious Prosecution)

8 52. Plaintiffs re-allege and incorporate herein by reference each and every  
9 allegation contained in paragraphs 1-51 above.

10 53. A judicial proceeding was initiated against Plaintiffs for which the County was  
11 responsible for investigating, prosecuting and/or continuing. However, no probable cause existed  
12 to support the County's actions.

13 54. The County acted with malice in pursuing its illegitimate cause of action.  
14 Nonetheless, the judicial proceeding terminated favorably for Plaintiffs.

15 55. Such malicious prosecution resulted in injury and damage to Plaintiffs, for  
16 which they are entitled to compensation.

#### 17 EIGHTH CAUSE OF ACTION

##### 18 (Declaratory Judgment)

19 56. Plaintiffs re-allege and incorporate herein by reference each and every  
20 allegation contained in paragraphs 1-55 above.


21 57. A dispute has arisen between the parties as their respective rights and  
22 obligations with respect to the permit granted by operation of law. Plaintiffs hereby requests that  
23 this Court enter a declaratory judgment pursuant to the Uniform Declaratory Judgment Act, Title  
24 27, Chapter 8, M.C.A., and REQUIRE the floodplain administrator to issue a floodplain permit  
25 pursuant to the application filed by Renascent, Inc. on January 28, 2006 and granted by operation  
26 of law, including section 76-5-405(2), M.C.A.

1 WHEREFORE, Plaintiffs respectfully pray for judgment as follows:

- 2 a. For general, specific and consequential damages in such amounts as may be  
3 determined at trial;
- 4 b. Punitive damages in the amount of \$250,000.00;
- 5 c. For an award of Plaintiffs' reasonable attorney fees and costs in connection  
6 with this litigation;
- 7 d. For declaratory judgment as requested; and
- 8 e. For such other and further relief as this Court may deem just and proper.

9 DATED this 11 day of <sup>June</sup>~~May~~, 2007

10 MARKETTE LAW OFFICE

11  
12 By   
13 David T. Markette  
14 Attorney for Plaintiffs